

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ASHLEY HARVEY, INDIVIDUALLY AND
AS NEXT FRIEND OF L. H., A MINOR,

Plaintiff,

V.

CARTHAGE ISD, OTIS AMY, SCOTT
SURRETT, DR. JOSEPH GLENN
HAMBRICK,

Defendants.

[illegible]

CIVIL ACTION NO. 2:18-CV-00164-JRG

ORDER

Before the Court is Plaintiff’s Motion for Partial Summary Judgment as to Defendant’s Counterclaim (the “Motion”). (Dkt. No. 51.) Defendants filed a counterclaim alleging that “Plaintiff[’s] lawsuit is frivolous, unreasonable, and without foundation, and therefore Defendants seek costs and reasonable attorney’s fees against Plaintiff[] and [her] counsel, jointly and severally.” (Dkt. No. 10 ¶ 171, CISD’s Answer.) Plaintiff timely filed an answer to Defendants’ counterclaim denying the allegations. (Dkt. No. 13 ¶¶ 1–5, Plaintiff’s Answer to Counterclaim.) In the Motion, Plaintiff moves for summary judgment as to Defendants’ counterclaim because Defendants “cannot prevail on their counterclaim for attorneys’ fees” as a matter of law. (Dkt. No. 51 at 9.) Defendants did not file a response to the Motion.

Defendants’ failure to respond “creates a presumption that [Defendants] do[] not controvert the facts set out by [Plaintiff] and has no evidence to offer in opposition to the motion.” L.R. CV-7(d). Defendants have not presented any evidence demonstrating that the lawsuit was frivolous, unreasonable, groundless, without foundation, or brought in bad faith. Nor did Defendants present

any evidence to rebut Plaintiff's position that its constitutional claims were based on an allegation that the previously-named Defendants (Principal Amy, Superintendent Hambrick, and Coach Surratt) had inherent authority from the school board to make a decision as to G.C.'s conduct and thus, the school board had effectively authorized their actions. (Dkt. No. 51 at 9–11.) Accordingly, on the existing record before the Court and in light of the presumption created by Defendants' failure to respond, the Court finds that Plaintiff's Motion for Partial Summary Judgment as to Defendant's Counterclaim should be and hereby is **GRANTED**. Consequently, it is **ORDERED** that Defendants are not entitled to attorneys' fees and their request for same is **DENIED**.

So ORDERED and SIGNED this 22nd day of January, 2019.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE